



The Attorney General of Texas

October 16, 1979

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Honorable Harvey Davis
Executive Director
Texas Department of Water Resources
P. O. Box 13087, Capitol Station
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Opinion No. MW-69

Re: Failure of the 66th
Legislature to fund the Office of
Public Interest in the General
Appropriations Act.

Dear Mr. Davis:

You have requested our opinion in reference to the failure of the 66th Legislature to fund the Office of Public Interest. Section 5.181 of the Water Code creates an office of public interest to insure that the Texas Department of Water Resources promotes the public interest. The office is headed by a public interest advocate appointed by the commission and the board. He is to be a party to all proceedings before the board. Water Code § 5.181(c). A bill to repeal this section was introduced in the 66th Legislature but failed to pass. The department's budget request for fiscal years 1980-81 included funding for the Office of Public Interest, but the legislature failed to include an item for that purpose in the General Appropriations Act. You ask whether the department may fund the Office of Public Interest by transferring available state appropriated monies into the Office of Public Interest Program.

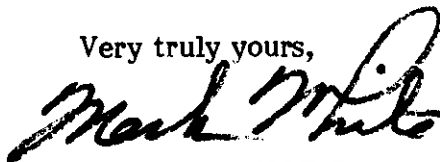
Even though the appropriations act does not include a specific item to fund the office of public interest advocate, there is no prohibition against spending funds for that purpose. Indeed, there has never been a specific item of appropriation for that office. See Acts 1977, 65th Leg., ch. 872, at 2986-2991. During the past biennium the office was funded from a general administrative account. Since section 5.181 of the Water Code requires that the public interest advocate be a party to all proceedings before the board, we believe the board is obligated to appoint a public interest advocate and it may fund that position from any appropriations available for that purpose. Attorney General Opinion H-211 (1974). Your specific question is phrased in terms of transferring funds to the office of public interest function; however, there is no necessity that the office be treated as a separate expenditure item. So long as the funds for the office come from a single appropriations item, no question of fund transfer need arise.

In light of our answer to your first question, we need not address your second question which involves the effect of a failure to have a public interest advocate.

S U M M A R Y

The Department of Water Resources is required to have an office of public interest advocate.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark White", written in a cursive style.

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